IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.93 OF 1991

Shri Ravi Jain, Assistant
Commissioner of Income-Tax
Mumbai ... Applicant

versus

M/s.M.T.Patil Bhujbal & ors. ... Respondents

...

Mr.H.V. Mehta, for the Applicant.

Mr.S.G. Sabnis, with Mr. P.M. Khanna, for the Respondents Nos. 1 to 5.

Mr.B.H. Mehta, A.P.P., for the Respondent State.

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CORAM : A.M.KHANWILKAR,J.

24th February 2005

ORAL JUDGMENT :

1. Heard Counsel for the parties. By this application, exception is taken to the order passed by the Additional Chief Metropolitan Magistrate, 47th Court at Bandra, Mumbai dated

5th February 1991 in Formerly Case Nos. 4055/S/90 to 4062/S/90, subsequently registered as Case Nos. 908/S/89 to 915/S/89.

2. The short question involved in the present application is whether the Respondents Nos.1 to 5 can be prosecuted on the basis of provision, which has been omitted by amendment before the institution of the subject complaint. The offence is referable to infraction of section 269-T read with section 276-E of the Income-tax Act, 1961. It is not in dispute that section 276-E was deleted or omitted from the statute book on 1st April 1989 whereas sanction to prosecute the Respondents was accorded on 27th June 1989 and the formal complaint came to be filed only on 30th June 1989. In other words, the prosecution has been launched in respect of offence under section 276-E after that provision was omitted by Direct Tax Laws (Amendment) Act, 1987 with effect from 1st April 1989. The question is whether such prosecution can be instituted and continued in law. The issue has been squarely answered in the decision of the Apex Court reported in (2002) Vol. 257 ITR 338

in the case of General Finance Co. and another v. Assistant Commissioner of Income-Tax. Similar contention was considered in that case in connection with offence arising out of non-compliance of requirements of section 276-DD of the Act and the Apex Court observed that non-compliance with section, which has been omitted, cannot be the basis for launching or continuing the prosecution. Applying the same principle, no fault can be found with the conclusion reached by the trial Court in the fact situation of the present case in discharging the Respondents Nos.1 to 5 on that reasoning. It is, however, necessary to clarify as has been observed by the Apex Court in the said decision that omission of the provision regarding prosecution will not affect the levy of penalty. That option, if available and permissible by law, can be pursued by the Department against the Respondents, irrespective of dropping of prosecution against the Respondents in view of the legal position, as referred to above.

3. Application disposed of with the above observations.

(A.M.KHANWILKAR,J.)